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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. 719

ANNE M. EVANS,
Appellant, Petitioner,

vs.

JOSEPH BRUSSEL and KRESZENTIA BRUSSEL, His Wife, THE RENGEL-WEBER REALTY COMPANY, H. P. HAHN, LAST BOARD OF DIRECTORS OF THE GREATER ST. LOUIS CORPORATION, a Corporation, and ALL THE UNKNOWN HEIRS, GRANTEES OR SUCCESSORS IN TITLE, and CITY OF ST. LOUIS, a Corporation,
Appellees, Respondents.

BRIEF

In Opposition to Petition for Writ of Certiorari to Supreme Court of Missouri.

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IN THE

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Appellees, Respondents.

BRIEF

In Opposition to Petition for Writ of Certiorari to Supreme Court of Missouri.

JURISDICTIONAL STATEMENT.

The jurisdictional statement required by paragraph 2 of Rule 13 fails to contain in the order here indicated:

a) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported.

b) A concise statement of the grounds on which the jurisdiction of this court is invoked.

I. The nature of the proceeding, and the statute pursuant to which it is brought:

II. The date of the judgment or decree sought to be reviewed, the date the notice of appeal was filed, and the Court in which it was filed;

III. The statutory provision believed to confer on this court jurisdiction of the writ of certiorari;

IV. Cases believed to sustain the jurisdiction.

V. Appellant's petition for a writ of certiorari fails to set forth with any particularity any valid reasons or grounds providing for due process of law under the provisions of Title 28, United States Code, Section 1254 (1).

The circuit courts of the State of Missouri have original jurisdiction in all cases involving title and possession to real estate. Appellant filed such petition, and appellees filed its answer and cross-bill thereto; issues were joined; trial was had upon the issues thus joined; judgment was rendered in favor of appellee City of St. Louis, a municipality; appellant prosecuted a timely notice of appeal to the Supreme Court of Missouri, Division No. 2—September Session, 1959. Both parties filed briefs and oral arguments had; after consideration, and in due course, rendered its opinion on the merits thereof. (See Appendix "B").

Appellant has had her day in court under the said provisions of Title 28, United States Code, Section 1254 (1), all of which are in accordance with the applicable provisions of due process of law.

QUESTIONS PRESENTED FOR REVIEW.

Paragraphs 1-7, pp. 4-23, Appellant's Petition for Writ of Certiorari, fail to contain any constitutional questions for review by the Supreme Court of the United States, but merely consist of rambling, immaterial, irrelevant, questions, instead of giving to this Court pertinent questions for its review; all of which should be disregarded.

STATUTES INVOLVED

Thereafter, on March 11, 1957, the Supreme Court of Missouri rendered its opinion in case of Anne M. Evans, Appellant herein, and the City of St. Louis, a municipality, reported in 300 S. W. 2d 442-443, in paragraphs 1-2 inter alia, ruled:

> "Section 140.590 provides that any suit against a tax purchaser 'for the recovery of lands sold for taxes, or to defeat or avoid a sale or conveyance of lands for taxes (except in certain specified cases as to which there are no allegations in this petition) shall be commenced within three years from the time of recording the tax deed, and not thereafter.' Plaintiff's petition shows that this suit is barred by that statute in so far as it seeks any relief against the collector's deed to the city. Granger v. Barber, 361 Mo. 716, 236 S. W. 2d 293; Pettus v. City of St. Louis, 362 Mo. 603, 242 S. W. 2d 723. However, that is not the only relief plaintiff seeks. Her petition states that she claims to be the owner in fee simple, stating the source of her title; that defendants other than the city claim some title; that the city claims some title under the tax deed, the description in which is not stated, but is alleged to have been based on an improper description; and that she prays the Court to try, ascertain and determine the estates, title and interest, and to hear and finally decide and determine any and all rights, claims, interest, liens and demands whatsoever of the parties or any of them, concerning or affecting the real property hereinbefore described, and by its decree to adjudge, determine, settle, quiet and define the respective rights, claims, titles, interest, liens, demands and estate of plaintiff and defendants to said real property."

STATEMENT.

Appellant has brought this proceeding before this Court by filing a Petition for a Writ of Certiorari, and stated a **Summary With Reasons for Allowance of the Writ** (R. 12). She claims, without merit and applicable citation of any authority or any substantial statement of fact or law, the correctness of her statement. She charges in like manner that the respondent and the Court below have denied her due process of law which she is entitled to under the 14th Amendment of the Constitution of the United States, and fails in like manner to particularize the charge thereof; it is our deliberate judgment that said allegation that the said respondent, The City of St. Louis, a municipal corporation, is wholly free from adverse criticism in the premises in dealing with said appellant's property mentioned in these proceedings.

Under due process of law, applicable law, in this case the appellant's property was subject to be taxed or assessed in the due course of administration of its financial and governmental affairs; there has been no denial or contrary rule or principle advanced.

Due process of law in its regular course of administration through courts of justice has been open, fair, and convenient to appellant at all stages of this case; appellant wrote and filed her own petition and pleadings to quiet title to said aforementioned real estate; tried and personally conducted the trial thereof in the circuit courts of the City of St. Louis; an adverse ruling was entered at the close of said hearing or trial; she duly filed her motion or petition for a rehearing which was duly considered and overruled by the circuit judge (court); appellant duly filed notice of appeal to the Supreme Court of Missouri, Div. No. 2, Cause Number ..... See Appendix 1, infra.

Appellant complains, without merit or just cause, that she was denied her constitutional guarantee of due process

of law, without even setting forth any specific fact or facts to substantiate her baseless claim in the premises.

"Due process of law" undoubtedly means in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights. Westervelt v. Gregg, 12 N. Y. 209, 62 Am. Dec. 160; but necessarily judicial proceedings; it may include summary proceedings, if not arbitrary or unequal as for collection of taxes; McMillen v. Anderson, 95 U. S. 37, 24 L. Ed. 335; nor is the right of appeal essential, where a statute has fixed the time and place of meeting of any board or tribunal, no special notice to parties interested is required; Reetz v. Michigan, 188 U. S. 505, 23 Sup. Ct. 390, 47 L. Ed. 563.

Law in its regular cause of administration through courts of justice is due process and when secured by the law of the state, the constitutional requirement is satisfied: Leeper v. Texas, 139 U. S. 462, 11 Sup. Ct. 577, 35 L. Ed. 225.

Cooley (Const. Lim. 441) says: "Due process of law in each particular case means, such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

Taking property under the taxing power is taking it by due process of law; High v. Shoemaker, 22 Cal. 363; Springer v. U. S., 102 U. S. 586, 26 L. Ed. 253. In this connection, it is said in State v. Allen, 2 McCord (S. C.) 56: "We think that any legal process which was originally founded in necessity has been consecrated by time, and approved and acquiesced in by universal consent * * * is embraced in the alternative 'law of the land'." The respondent has complied with this pronouncement compatible with legal principles and consistent with the facts and evidence shown in the record.

Appellant's petition for a writ of certiorari is lacking in any statement of facts or grounds relied on requisite in the premises, to confer jurisdiction upon this Court, i. e., no federal question is presented or involved, is pleaded. (Appendix "A")

Appellant has wholly failed to plead any substantial facts or records of any courts to sustain her claim of having been denied due process of law guaranteed to her under the 14th Amendment of the Constitution of the United States. The record before this Court adequately shows that appellant has received every safeguard provided for under the 14th Amendment of the Constitution of the United States. Failure to obtain or to receive the desired redress sought under her own pleadings from the Courts below, cannot be accepted as denials of due process of law. Appellant has unsuccessfully "piloted her own ship" across strange seas of turbulent waters to unknown shores of confusion, doubt and uncertainty. She has gambled and lost. Appellee herein challenges the record to show any denials of due process of law from the very inception of this case in the circuit courts of the City of St. Louis, Division No. 3 to the present stage of this case; adverse rulings and decisions do not constitute violations of due process of law. Appellee has set out in full (in haec verba) Appendix "B" as proof that appellant has been accorded every safeguard of her constitutional rights in the premises.

Leeper v. Texas, 139 U. S. 462, 11 Sup. Ct. 577, 35 L. Ed. 225, supra; taking property under the taxing power is taking it by due process of law; High v. Shoemaker, 22 Cal. 363; Springer v. U. S., 102 U. S. 586, 26 L. Ed. 253. "The meaning of these words is that no man shall be deprived of his property without being heard in his own defense," Kinney v. Beverly, 2 Hen. & M. (Va.) 318, 336. Appellant does not claim she has not been accorded every opportunity to be heard (24 L. Ed. 436; 42 L. Ed. 865). Meaning of due process of law.

SUMMARY OF ARGUMENT.

Appellant complains of the adverse opinions of the courts below and feels aggrieved because, as she says, "the Supreme Court of Missouri exceeded its jurisdiction when it affirmed the Circuit Court's finding that the homestead which appellant owned in fee simple under the Sheriff's deed should no longer be hers, but should henceforth become the property of the municipality in which she lived at whose instigation a public sale was held in the foreclosure of a judgment in rem, at which she was the highest bidder and purchaser." (Appellant's Brief, p. 4 [1]; (Appendix "B").

Appellant now overlooks the silent fact that she pursued every available right in the premises in the Courts below, comes here seeking relief by stating that she has not been accorded her rights to due process of law under the 14th Amendment to the Constitution of the United States nor under Article V, Section 3 of the Constitution of Missouri, both Courts having failed to follow the **Declaratory Judgment Act**, Art. 14, Laws of Missouri 1935, p. 218, par. 1, sec. 1126; "Courts shall declare rights, status, and other legal matters and such declaration shall have the same force and effect of a final judgment or decree." Under Section 1748, R. S. Mo. 1939, it is clear that appellant's sheriff's deed is a bar against all persons interested in the premises (Appellant's Brief, p. 22). The Supreme Court in its opinion decided otherwise (See Appendix "B").

Appellant then asserts that "the trial court erred in finding that appellant failed to establish any estate, title or interest in the property, but she assigns no reason for this contention except to say that the mandate in the previous appeal provided that the judgment dismissing her petition was reversed and the cause remanded with directions that Section 527.150 applies to those actions to

quiet title. * * *" The trial court complied with the mandate and decided the case on its merits. "There is nothing presented for decision by this point. * * *"

Plaintiff's fifth point is lengthy but the substance of it is that the sale for taxes to the City of St. Louis (appellee) was improper because the taxes against the property for which the property was sold was assessed against Joseph and Kreszentia Brussell and therefore she did not owe any taxes on the property. This contention is so obviously without merit that it justifies no extended discussion.

See Section 137.170, R. S. Mo. 1949; State ex rel. McKee v. Clements, 281 Mo. 195, 219 S. W. 900; State v. Gomer, 340 Mo. 107, 101 S. W. 2d 57; and the comment in Evans v. Buente, Mo. Sup., 284 S. W. 2d 543.

ARGUMENT.

"Due process of law" undoubtedly means in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights. Westervelt v. Gregg, 12 N. Y. 209, 62 Am. Dec. 160, supra.

Appellant in her ramblings fails to point any specific incident under our procedure where she has not been accorded "Due process of law". She seems to be laboring under a misapprehension of the meaning of "Due process of law". She does not point out any specific incident or incidents of failure to accord to her any right, bestowed upon her by that beneficient, strong arm of the law "Due Process of Law". Repeating, we sincerely state that appellant selected her own forum, drew her own pleadings, presented her evidence to substantiate her claims, and received an adverse ruling thereon; she filed a timely motion for a rehearing, presented her memoranda of fact and law, and upon due consideration by the Court (equity) received again an adverse decision; she then filed a timely notice of appeal to the Supreme Court of the State of Missouri; filed printed briefs and was allowed the privilege of oral arguments; the case was then taken as submitted; in due time under the Rules of Practice and Procedure, the Supreme Court ruled against her. (See Appendix "B".)

Appellant in her statement of "Jurisdiction" (p. 4) is invoked upon the basis of the provisions of Title 28, United States Code, Section 1254 (1). It is a plea under the 14th Amendment of the United States Constitution providing for due process of law to sustain the individual and property rights of a citizen of the United States and prevent confiscation by the municipality.

The Court's jurisdiction is also invoked under Title 28, U. S. Code, Section 1253 IV-109, which provides that the

United States Supreme Court can take notice of a record in a prior case taken to the State Supreme Court involving the same subject matter. The rehearing sought by petitioner was denied by the Court January 11, 1960. Thus, this petition is presented within the time prescribed for applying therefor by Title 28, U. S. Code, Sec. 2101 (c).

Appellees herein seriously contend that the above quoted paragraphs, p. 4, petition for writ of certiorari, to the Supreme Court of Missouri, Division No. 2, is inadequate or insufficient to invoke the jurisdiction of the Supreme Court in this case; it is wholly lacking in any concrete statement of any reason for the intervention of this Supreme Court of the United States; it is neither in form nor substance for the purposes mentioned.

The bottom half of appellant's petition for writ of certiorari, p. 4, under heading, "Constitutional Questions Presented for Review" consists of seven (7) rambling questions not based on facts or reasons and were all disallowed and overruled in very terse language. They presented no constitutional questions for review by this court. We see no occasion or necessity to spend any time and effort to discuss the matters shown on pp. 8-20, **Appellant's Petition for Writ of Certiorari** to the Supreme Court of Missouri, Division No. 2.

Finally, it will be observed that appellant's failure to adequately and logically present and state any ground or grounds of any violation of the Constitutional provision for due process of law in the case at bar, as no specific or detailed assignments are given the petition for a writ of certiorari is not indicated, and should be denied.

It is further to be observed that appellant for the first time raises a federal question in her petition for a writ of certiorari filed in this Court.

Appellees further state that appellant continues to ramble with no visible prospects of stating a clear, valid,

case before this Supreme Court of the United States for a writ of certiorari (Supreme Court Rule 12, Jurisdictional statement, supra).

In the circumstances we feel a lengthy argument or extended remarks would be amiss our purpose and perhaps fail to state clearly and succinctly the essential points or observations necessary to reach a definite, clear, and valid decision on the merits.

Appellant comes to this Court on a Petition for a Writ of Certiorari to review the decision and final judgment of the highest court of the State of Missouri claiming she has been denied the rights of due process of law; she makes that charge without a scintilla of proof. What record has she to offer here? I repeat for emphasis she has no proof of being denied her rights to due process of law. Has she left behind what the highest tribunal in all the world desire to know the facts and truths requisite to put at rest any misgiving of as to her sincerity and integrity in this matter? Has appellant enumerated the facts constituting a denial of due process of law, or is appellant satisfied to leave this Court in doubt as to the facts or evidence of her complaint she makes here today? Appellant fails and refuses to throw the switch to turn on the lights of facts shrouded in darkness of intelligent understanding of her charges—denial of due process of law. When, where, and by whom does she point the finger of scorn and intrigue?

CONCLUSION.

For the reasons hereinabove set forth, appellant requests this Court to adjudge and decree that the appellee and the Courts below have consistently and unlawfully denied her the beneficent guarantees provided by the Fourteenth Amendment of due process of law. The foregoing is ample proof that she labors in vain to obtain that

which she fails to evidence with facts and figures that she has been denied her constitutional rights in any particular; in her petition in the Court of first instance, she failed to establish any such rights, and she has failed to bring any such rights of due process of law, and, if so, in what manner. She deserves to be denied any relief she seeks in this Supreme Court of the United States.

Respectfully submitted,

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"APPENDIX A."

State of Missouri
City of St. Louis } ss

In the
Circuit Court of the City of St. Louis,
Equity Division.

Anne M. Evans,

Plaintiff,

vs.

Joseph Brussel and Kreszentia Brussel, His Wife; The Rengel-Weber Realty Co., H. F. Hahn and Bertha Greber of 451 Paul Brown Bldg., Clara W. Hahn, 4003 Russell Bl., Last Board of Directors of The Greater St. Louis Corporation, a Corporation, and All the Unknown Heirs, Grantees or Successors in Title, and The City of St. Louis, a Corporation.

Defendants.

Cause #46,113-D.
Division #3.

Petition to Determine and Quiet the Title.

1. Plaintiff for her cause of action states that she is the owner, and claims to be the owner in fee simple of the following described real estate lying, being and situate in the City of St. Louis, Missouri, to-wit:

A parcel of land in City Block 466 E, comprising the southern 25 feet of lots 19 to 22, both inclusive in Block 5 of D. D. Page's Southern Addition, a subdivision having a front of 25 feet on the west line of Ninth Street (50 feet wide) by an aggregate depth

between parallel lines of 100 feet along the north line of Rutger Street (50 feet wide) to lot 23 of said block and subdivision, bounded on the north by property now or formerly of Frank A. Frankel et al.

2. Plaintiff states that she acquired fee simple title to the above described property from the City of St. Louis, by Sheriff's deed in the execution of a judgment in rem dated the 16th day of October, 1930, of the Circuit Court of the City of St. Louis, in a certain cause pending wherein the City of St. Louis was plaintiff and Mathias Gotsch oll, Joseph and Kreszentia Brussel, The Rengel-Weber Realty Co. and others were defendants in condemnation, as shown on plaintiff's deed; that it was sold under a special execution returnable to the Feb. Term, 1937, and directed in favor of the City of St. Louis, endorsed for the use of the Greater St. Louis Corp., Assignee; that the said property was sold on the 24th day of Dec., 1936, and Anne M. Evans, the plaintiff herein, being the highest and last bidder, it was stricken off and sold to her, and a Sheriff's Deed given her which she recorded March 22, 1937, in Book 5651, page 398, in the office of the Recorder of Deeds in the City of St. Louis;

3. Plaintiff states that the above named defendants and their unknown heirs, grantees or successors and each of them, claim some interest in the above described real estate the nature of which is unknown to plaintiff, unless said defendants claim some right, title or interest was left in them after the said Sheriff's sale under aforesaid judgment in the execution thereof to plaintiff on the 24th day of December, 1936, but plaintiff asserts that the interest, if any of said defendants in said real estate was cut out by, and was subject to the fee simple title of Anne M. Evans, plaintiff herein, acquired by said sheriff's deed recorded in Book 5651, page 398, of the Recorder of Deeds of the City of St. Louis;

4. Plaintiff states that the defendant the City of St. Louis may claim some title still remains in them by virtue of a Jones Munger tax deed filed Sept. 17, 1941, and recorded in Book 6019, page 79, based on certificate of Purchase =1482 dated Nov. 1, 1937, for taxes for the years 1930 to 36 inclusive, returned delinquent in the name of Joseph and Kreszentia Brussel, which interests the City itself had already conveyed by sheriff to plaintiff Dec. 24, 1936, by deed set out in Paragraph 1, and which purchase certificate =1482, the Circuit Court of the City of St. Louis had already declared to be null and void because of the improper description of the property in the advertisement in the Daily Record; the finding of the Court in Supreme Court Cause 79,785, page 45, item 4, being 75,398-C in St. L. Circuit Ct. being:

> "The sale of the property in count 13—is invalid as to the City of St. Louis, and certificate of titles—=1482 are null and void."

5. The aforesaid tax deed to the City, recorded in Book 6119, Page 345, further shows on its face that the delinquent taxes from 1931 to 1937 were returned delinquent in the names of Alfred and Kreszentia Brussel; that the said Alfred and Kreszentia Brussel nor any person in their behalf having tendered the said tax, that the said property had been duly assessed and properly charged on the tax books for the years 1931 to 1937; that the City of St. Louis was empowered to hold said property in as full a manner as the Collector of Revenue of said City was empowered by law to sell the same, based upon legal publication made of the sale of this property, but plaintiff asserts that her aforesaid deed in paragraph 1 was of record at the time, having been recorded March 22, 1937; she asserts that the face of the collector's deed shows that there was no duly made assessment, nor due notice of publication, nor notice that her property was about to be taken;

6. Plaintiff states that the defendants and each of them claim and assert title to the aforesaid real estate, and that the claims of said defendants are adverse and prejudicial to the title and interest of plaintiff in and to the said real estate.

Wherefore, plaintiff prays the Court to try, ascertain and determine the estates, title and interest, and to hear and finally decide and determine any and all rights, claims, interest, liens and demands whatsoever of the parties or any of them, concerning or affecting the real property hereinbefore described, and by its decree to adjudge, determine, settle, quiet and define the respective rights, claims, titles, interest, liens, demands and estate of plaintiff and defendants to said real property.

And plaintiff further prays that if the court finds that she is the sole owner of the real estate hereinbefore described, that an Order and Decree be rendered and entered of record forever barring and precluding the Defendants and each of them, as well as all persons claiming by, through or under said defendants, from hereafter setting up any title or claim to said property, and for all other Orders and relief in the premises.

And may an Order of Notice of Publication issue forthwith.

"APPENDIX B."

In the Supreme Court of Missouri.
Division Number Two.

Anne M. Evans,
Appellant,
v.
Joseph Brussel and Kreszentia Brussel, his wife, The Rengel-Weber Realty Co., H. P. Hahn and Bertha Greber, Clara W. Hahn, Last Board of Directors of the Greater St. Louis Corporation, a Corporation, and all the unknown heirs, grantees or successors in title, and the City of St. Louis, a Corporation,
Respondents.
No. 47,456

Appeal From the Circuit Court of the City of St. Louis.

Honorable David J. Murphy, Judge.

In this suit to determine title to real estate located in the City of St. Louis the plaintiff has appealed from a judgment that she has no title or interest in the property. This is the second appeal in this proceeding. See Evans v. Brussel, Mo. Sup., 300 S. W. 2d 442.

Plaintiff purchased the property herein involved on December 24, 1936, at a sheriff's sale held pursuant to a special execution issued upon a benefit judgment previously entered in a condemnation suit to establish, open and widen a public highway. At that time general taxes assessed against the property for all years back to and including 1930 were delinquent and unpaid. The Jones-Munger Act, Laws of Missouri, 1933, pp. 425-449 (see now chapter 140,

Title 40, R. S. Mo. 1949, V. A. M. S.); was then applicable to the City of St. Louis. The property was advertised and offered for sale for delinquent taxes for the third time on November 1, 1937. It was purchased by the City of St. Louis and the collector issued certificate of purchase number 1482. Plaintiff does not challenge the validity of that sale because of alleged insufficiency of the purchase price. The plaintiff, nor anyone else, redeemed the property within the statutory period for redemption, and on September 1, 1941, the collector executed and delivered his deed to the City of St. Louis.

In her petition, which was not amended subsequent to the previous appeal, plaintiff alleged that she is the owner of the property in fee by virtue of the above referred to sheriff's deed, but that the defendants, other than the City of St. Louis, claim some interest therein, and the City of St. Louis "may claim" that some title still remains in it by virtue of the above mentioned collector's deed based on certificate of purchase number 1482 which "the Circuit Court of the City of St. Louis had already declared to be null and void because of the improper description of the property in the advertisement." Plaintiff also alleged that the taxes for which the property was sold were returned delinquent in the names of Alfred and Kreszentia Brussel, but that at the time of the tax sale the sheriff's deed to her was of record and therefore the collector's deed shows that "there was no duly made assessment, nor due notice of publication, nor notice that her property was about to be taken." Plaintiff prayed that the court try, ascertain and determine the estates, title and interest of all the parties. The City of St. Louis filed an answer and also what it termed a cross-bill in which it alleged it was owner of the property by virtue of the collector's deed and that plaintiff and the other defendants had no interest therein. The City then prayed that the court try and determine the estates, title and interest of the parties and adjudge it to

be the sole owner of the property. All other defendants defaulted.

The only evidence introduced by plaintiff at the trial consisted of a photograph of the property, a copy of the special execution issued on the benefit judgment upon which the sheriff's sale was based, a copy of the sheriff's deed to her, and pages 17, 18, 19 and part of page 45 of the transcript filed in this court in Evans v. City of St. Louis, 355 Mo. 790, 198 S. W. 2d 9. The City of St. Louis introduced the collector's deed issued to it and some oral testimony from an employee of the collector's office to show that the general taxes from 1939 to the time of the sale were delinquent and unpaid. Plaintiff admitted that she paid no taxes on the property at any time.

In Evans v. City of St. Louis, supra, plaintiff filed a suit in which count 13 of the petition pertained to the property in question, and pages 17, 18 and 19 of the transcript contain the allegations of count 13. In that suit plaintiff did not challenge the validity of the collector's deed to the City of St. Louis except on the basis that at the time of the tax sale she personally did not owe any taxes on the property and no valid assessment of taxes had been made because the property was not assessed in her name. The trial court dismissed count 13, and eight other counts, because plaintiff refused to amend her petition to comply with what is now Section 140.600 (all subsequent statutory references are to R. S. Mo. 1949, V. A. M. S.). Plaintiff appealed, but the appeal was dismissed by this court. In that case, although admitting there was no occasion to do so, the trial court made certain "findings of law or fact," one of which was that "The sale of property in count * * * 13 is invalid as to the City of St. Louis, and certificate of title [purchase?] * * * 1482 [is] void for bad description in advertisement in Daily Record." This is the item on page 45 of the transcript in that case which plaintiff introduced in evidence in this case. However, neither the collector's

publication of notice of sale for delinquent taxes upon which the sale of November 1, 1937, was based nor certificate of purchase 1482 was offered in evidence in this case.

The trial court entered judgment that the City of St. Louis is vested with fee simple title to the property, and that plaintiff failed to establish any estate, title or interest in the property.

Plaintiff's points relied on in her brief are lengthy, rambling and difficult to understand, but a careful study of them indicates that she makes the following contentions.

Plaintiff first contends that she was entitled to a decree vesting title in her by reason of the opinion of this court in the previous appeal in this case [300 S. W. 2d 442]. That contention is without merit. In the previous appeal this court held no more than that her petition should not have been dismissed; but that after she had alleged that she had title to the property she was entitled to an adjudication of her existing title, and that if she had no title the trial court should so adjudge and decree. This the trial court did.

Plaintiff next asserts that the trial court erred in not finding that the special execution upon which the sheriff's sale to her was made was issued at the request of the City of St. Louis. Plaintiff states that "This shows that the City Attorney knew the source of appellant's title when he filed the affidavits [that] he did not." We fail to see how the failure to make this finding, assuming it was correct, could possibly have any bearing on the merits of this appeal.

The third point first deals with damages suffered by plaintiff, and in view of the judgment entered, damages to plaintiff cannot be an issue on this appeal. Plaintiff then asserts that the trial court erred in finding that she failed to establish any estate, title or interest in the property, but she assigns no reason for this contention except to say that

the mandate in the previous appeal provided that the judgment dismissing her petition "was reversed and the cause remanded with the direction that Sec. 527.150 applies to those actions to quiet title, * * *." The trial court complied with the mandate and decided the case on its merits. There is nothing presented for decision by this point.

In what plaintiff has designated as her fourth point she first recites a part of her pleadings, and then asserts that the trial court erred "in permitting defendant City to file a collector's deed, from Joseph and Kreszentia Brussel to the City of St. Louis, which showed on its face that it was based on Certificate of Purchase No. 1482, which had already been declared null and void * * * and which was not signed by the County Clerk as required by statute." The collector's deed was not from the persons named but was from the collector of the City of St. Louis. The certificate of purchase is not in evidence, and in Evans v. City of St. Louis, supra, the judgment was that count 13 of plaintiff's petition be dismissed without prejudice, and such judgment was not res judicata of any issue pertaining to the validity of the certificate of purchase, or of any voluntary statement made by the trial court concerning an issue not adjudicated. 50 C. J. S., Judgments, § 707; Couch v. Harp, 201 Mo. 457, 100 S. W. 9. The collector's deed was executed by the collector, witnessed by the comptroller and properly acknowledged. There was then, and is now, no county clerk in the City of St. Louis. As to the duties of the comptroller of said city in connection with "the sale of land for taxes" see Section 137.525. In addition as to this point plaintiff makes no assignment in her motion for new trial that the collector's deed was void because it was improperly or insufficiently executed.

Plaintiff's fifth point is lengthy, but the substance of it is that the sale for taxes to the City of St. Louis was improper because the taxes against the property for which the property was sold was assessed against Joseph and

Kreszentia Brussel, and therefore she did not owe any taxes on the property. This contention is so obviously without merit that it justifies no extended discussion. See Section 137.170; State ex rel. McKee v. Clements, 281 Mo. 195, 219 S. W. 900; State v. Gomer, 340 Mo. 107, 101 S. W. 2d 57; and the comment in Evans v. Buente, Mo. Sup., 284 S. W. 2d 543.

The sixth point is that the trial court erred in finding that plaintiff's suit was barred by the three-year statute of limitations when the deed was valid on its face because (1) it was not signed by the county clerk; (2) the certificate of purchase had been adjudged to be void; (3) the collector's deed "does not even contain appellant's name, but the name of 'Brussel,' the former owner;" and (4) plaintiff owed no taxes to the City of St. Louis on November 7, 1937, the date of the sale by the collector. Section 140.460 provides that the collector's deed shall contain a provision that the land was sold at public auction to the named purchaser "for the sum of ..... dollars and ..... cents, being the amount due on the following described tracts or lots of land, returned delinquent in the name of G. H., for non-payment of taxes, * * *." Section 140.500 provides that the sale of lands for taxes "shall not be invalid on account of such lands having been listed or charged on the tax book in any other name than that of the rightful owner." Therefore, the use of the name "Brussel" in the collector's deed, which was the name in which the taxes for which the land was sold was returned delinquent, could not result in the collector's deed being void. Each of the other contentions above enumerated have previously been answered.

Plaintiff's seventh point is that the trial court erred in overruling her objection that "any questions going into the tax bills are immaterial, unless it relates to the plaintiff in this case." This is obviously without merit. "Each tract of land or lot shall be chargeable with its own taxes,

no matter who is the owner, nor in whose name it is or was assessed. * * * [N]o error of omission in regard to the name of any person, with reference to any tract of land or lot, shall in anywise impair the validity of the assessment thereof for taxes." Section 137.170. See also Section 140.500 and Adams v. Smith, 360 Mo. 1082, 232 S. W. 2d 482. It was proper for the City of St. Louis to show the amount of taxes delinquent, and for what years, and for what delinquent taxes the land was sold.

The two remaining points are quite lengthy and contain several contentions previously ruled on. The only contention we can glean therefrom not previously ruled is to the effect that the sheriff's deed to plaintiff wiped out all the then existing general taxes, and therefore, no taxes were due when the collector sold the property for taxes on November 1, 1937 to the City of St. Louis. Plaintiff cites State ex rel. City of St. Louis v. Baumann, 348 Mo. 164, 153 S. W. 2d 31, but that case does not support her contention. In State ex rel. Buder v. Hughes, 350 Mo. 547, 166 S. W. 2d 546, a judgment for benefit special taxes was obtained but no execution was issued thereon. Later the land was sold under the Jones Munger law for general taxes. Before a collector's deed was issued to the purchaser at the tax sale, the holder of the benefit judgment sought to revive it by scire facias. This court held that the purchaser at a sale foreclosing the State's superior lien for taxes acquires an interest superior to those holding inferior liens, and that while the execution sale based on the benefit judgment would wipe out any liens junior to the judgment lien, the purchaser at the execution sale would necessarily take subject to the superior rights of the certificate holder. In Morey Engineering & Construction Co. v. St. Louis Artificial Ice Rink Co., 242 Mo. 241, 146 S. W. 1142, 40 L. R. A. (N. S.) 119, Ann. Cas. 1913C 1200, it was held that real estate tax liens are superior and prior to all other liens, including the lien of special taxes for improvements. There can be question

but that when plaintiff purchased the property on December 24, 1936, and received the sheriff's deed what title she acquired was subject to the lien for general taxes.

The City of St. Louis filed a motion to dismiss the appeal for failure on the part of the plaintiff to comply with Supreme Court Rule 1.08, and we would be entirely justified in taking the requested action. However, in a lenient exercise of discretion we have disposed of the appeal by ruling on the merits of the contentions of plaintiff insofar as we have been able to determine those contentions.

The judgment is affirmed.

Alden A. Stockard, Commissioner.

Bohling, C., Concurs.

Barrett, C., Concurs.

Per Curiam: The foregoing opinion by Stockard, C., is adopted as the opinion of the Court.

All concur